

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil No. 3:22-cv-00252-FDW-DSC**

KAITLIN BRADY,)	
)	
Plaintiff,)	
v.)	PLAINTIFF’S MOTION TO STRIKE
)	AMENDED AFFIDAVIT AND FOR
A STEP ABOVE LIMO SERVICE, LLC,)	SANCTIONS
and AYMAN S. ABUSAMAK)	
)	
Defendants.)	
_____)	

Plaintiff Kaitlin Brady, by counsel, respectfully submits this Motion to Strike Amended Affidavit and for Sanctions. In support of this Motion, Plaintiff states the following:

1. On April 19, 2023, Plaintiff filed her Motion for Partial Summary Judgment (ECF No. 17) and Memorandum in Support (ECF No. 18.) Plaintiff contemporaneously filed Declarations from Plaintiff and Plaintiff’s Counsel. (ECF Nos. 19, 20.) Defendants’ initial deadline for filing their opposition memorandum was May 3, 2023. *See* LCvR 7.1(c). Following several routine motions, the Court set May 17, 2023 as Defendants’ deadline to file their Opposition Memorandum.

2. At 12:10 a.m. on May 18, 2023, Defendants filed their opposition memorandum. (ECF No. 24.) At 1:28 a.m. on May 18, 2023, Defendants filed an unsigned Affidavit (“Unsigned Affidavit”) and supporting exhibits. (ECF No. 25; 25.1–.5.)

3. On May 24, 2023, Plaintiff filed her Reply Memorandum, which in large part addressed the admissibility of the Unsigned Affidavit. (ECF No. 27.)

4. At 9:55 pm on May 24, 2023, Defendants’ counsel, Tyler Rhoades (“Rhoades”), attempted to telephone Plaintiff’s counsel, Corey Stanton (“Stanton”), which call went to

voicemail. Rhodes then texted Stanton at 9:58 p.m. and 9:59 p.m. At 11:15 p.m. Rhoades also emailed Stanton. Each of Rhoades' communications expressed that he mistakenly filed the Unsigned Affidavit on May 18, 2023 and he sought Plaintiff's consent to substitute a different version of the affidavit that he represented was "finalized and notarized" as of May 17, 2023 ("Signed Affidavit").

5. On May 25, 2023, Stanton requested to review a copy of the Signed Affidavit Rhoades intended to file in substitution of the Unsigned Affidavit. In response, Rhoades emailed Stanton a copy of a Draft Motion for Leave to File Amended Affidavit of Defendant Ayman S. Abusamak ("Draft Motion for Leave of Court") and a copy of the Signed Affidavit Defendants represented they intended to file on May 17, 2023.

6. Inspection of the Signed Affidavit's metadata revealed that the Signed Affidavit was created on May 25, 2023 and could not have been filed on May 17, 2023 as represented by Rhoades.

7. As fully explained in Plaintiff's supporting Memorandum of law, Stanton attempted to confer with Rhoades and resolve issues related to the representations made in the Draft Motion for Leave of Court, as well as the legitimacy of the Signed Affidavit. Rhoades could not provide proof that the Signed Affidavit was in existence as of May 17, 2023, and refused to respond to Stanton's requests for additional evidence.

8. On May 31, 2023, Defendants filed an Amended Affidavit (ECF No. 28) and supporting exhibits (ECF No. 28.1,) without seeking leave of court. By filing the May 31, 2023, Amended Affidavit, Defendants completely abandoned their original explanation for seeking leave to file the Signed Affidavit as set forth in the Draft Motion, i.e., that the Signed Affidavit was "final and notarized" as of May 17, 2023 but a draft version was "mistakenly filed" instead.

9. Plaintiff's Motion to Strike Amended Affidavit and for Sanctions is premised upon Defendants' (1) representations regarding a seemingly fraudulent affidavit and (2) the untimely filing of Defendants' Amended Affidavit.

10. Plaintiff has incurred significant attorneys' fees as a result of Defendants' misconduct.

WHEREFORE, for the reasons set forth above and discussed more fully in Plaintiff's supporting Memorandum of Law, Plaintiff respectfully requests that the Court strike the Amended Affidavit filed by Defendants on May 31, 2023 and order Defendants or their counsel to pay Plaintiff's reasonable attorney's fees incurred addressing the issues raised in the instant motion.

Respectfully submitted this 7th day of June 2023.

s/ Corey M. Stanton
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CERTIFICATE OF SERVICE

This is to certify that on June 7, 2023, the undersigned filed the foregoing using the Court's CM/ECF system which will send notification of such filing to the appropriate CM/ECF participants.

s/ Corey M. Stanton
Attorney for Plaintiff